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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re G.R., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

B.P.,

Defendant and Appellant.

G056676

(Super. Ct. No. 16DP1398)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Antony C.
Ufland, Judge. Reversed and remanded with directions.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah Morse,
Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

* * *

INTRODUCTION

Dependency proceedings involving now six-year-old G.R. (the minor) were initiated in the Orange County Juvenile Court when the minor had been in the state of California for less than six months. The juvenile court failed to make any factual findings regarding the minor's home state pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA) (Fam. Code, § 3400 et seq.), and failed to communicate with the possible home state—El Salvador—as required by the UCCJEA. The juvenile court proceeded to issue jurisdictional and dispositional orders, and to terminate the parental rights of the minor's parents, B.P. (mother) and N.G. (father). Mother appeals.

We reverse the order terminating mother's parental rights and remand the matter to allow the juvenile court to make the necessary findings regarding the minor's home state. If another country is determined to be the minor's home state, the juvenile court shall communicate with the court of that country to permit it the opportunity to exercise its jurisdiction over the minor. If California is determined to be the minor's home state, or if another home state declines to exercise its jurisdiction over the minor, the juvenile court's order shall be reinstated. If the juvenile court determines that the minor had no home state, the juvenile court shall determine if California should exercise jurisdiction under Family Code section 3427 and, if the court so determines, the juvenile court's orders shall be reinstated.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On December 30, 2016, the Orange County Social Services Agency (SSA) filed a dependency petition alleging that the minor, then four years old, came within the juvenile court's jurisdiction pursuant to Welfare and Institutions Code section 300, subdivisions (b)(1) [failure to protect], (d) [sexual abuse], and (g) [no provision for support]. The petition alleged: (1) father had sexually abused the minor on multiple occasions;¹ (2) mother denied observing any inappropriate touching of the minor by father when they were living in El Salvador or in Mexico; (3) father neglected the minor and left her in the care of others since arriving in California; (4) father might be in a gang in El Salvador; (5) father was currently incarcerated and unable to provide for the minor's care; and (6) mother resided in El Salvador and was unable to enter the United States to retrieve the minor.

In the detention report, SSA noted that father and the minor had "arrived from El Salvador about 2 months ago." Father had told SSA "he came to the United States in May of this year on a work permit and he and his daughter came together." Father had also stated that he did not have any relatives living in the United States. Mother had told SSA: "[I]n May 2016, the father, the mother, and the child left El Salvador and traveled to Chiapas, Mexico. The . . . father told her that he was going to leave with the child to the U.S.A[.] and then he was going to send for the mother. The . . . father did not send for her and she came to the U.S.A., but was deported."

In an addendum to the detention report, SSA reported the following statements by mother regarding how the minor came to be in California: "The mother stated that [father] had proposed leaving San Salvador to come to the United States. She explained they first went to Guatemala and then arrived in Chiapas, Mexico. The mother stated that they were there for a few months. The mother stated that during their stay in

¹ Father was criminally charged with multiple counts of violating Penal Code sections 288, subdivision (a), 288.7, subdivisions (a) and (b), and 285.

Chi[a]pas, Mexico[,] the father left without warning to a friend's house in Monterey[,] Mexico, then went on to the United States. The mother reported that the father would call her and tell her that he would send money. The mother stated that a month later she received two hundred dollars so she could pay for transportation to get herself and her eleven year old daughter . . . to Tijuana[,] Mexico. The mother reported that once she arrived at Tijuana[,] Mexico, she then tried crossing the border but was caught and deported back to San Salvador.”

The court vested temporary placement and care of the minor with SSA, and ordered her detained. The minor was placed in foster care.

In the jurisdiction and disposition report, SSA reported the following from mother regarding her attempts to have the minor returned to her custody in El Salvador: “The mother stated that she [is] working with the Salvadorian [sic] Embassy to see what could be done to have her daughter back with her. The mother stated that the Salvadorian [sic] Embassy instructed her to request a humanitarian visa, or to have her daughter deported back to El Salvador.” Mother expressed her willingness to participate in services in El Salvador in order to reunite with the minor. Mother agreed to look for parenting and counseling classes. SSA contacted a social worker in El Salvador who advised that a home study would cost \$4,500; SSA’s report stated this was “a very high amount of county funds.”

In an addendum report, mother stated she was having a difficult time participating in counseling and parenting classes, as those services were not offered in her area. SSA “suggested that she talk with a social worker in her area and ask them how to proceed with receiving services.”

At the jurisdiction hearing, the juvenile court sustained the allegations of the petition and set the matter for a disposition hearing.

At the disposition hearing, the juvenile court declared the minor to be a dependent child, found the minor’s best interests required custody be vested with SSA,

and ordered that mother be provided with family reunification services. However, the court denied (without prejudice) funds to conduct a home study in El Salvador.

At a contested 12-month hearing, the juvenile court found that return of the minor to mother would create a substantial risk of detriment to the minor's safety, protection, or physical or emotional well-being. The court also found reasonable services had been offered to mother and the extent of mother's progress in mitigating or alleviating the causes necessitating placement was only moderate. Therefore, the court terminated reunification services to mother, and set a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.

At the permanency planning hearing, the court found it was likely that the minor would be adopted, and terminated mother and father's parental rights. Mother filed a timely notice of appeal.²

DISCUSSION

"The UCCJEA is the exclusive method in California for determining subject matter jurisdiction in child custody proceedings involving other jurisdictions. [Citations.] . . . 'A dependency action is a "[c]hild custody proceeding"' subject to the UCCJEA.'" (*In re M.M.* (2015) 240 Cal.App.4th 703, 715.) "It is the responsibility of the juvenile court in the first instance to hold an evidentiary hearing to determine whether any basis exists under the UCCJEA for it to exercise jurisdiction and to make child custody orders beyond the temporary emergency orders authorized by section 3424. [Citation.] Our role, once the juvenile court has evaluated witnesses' credibility, resolved conflicts in the evidence and made its findings, is to ensure that the provisions of the UCCJEA have been properly interpreted and that substantial evidence supports the factual basis for the juvenile court's determination whether California may properly

² Father did not appeal.

exercise subject matter jurisdiction in the case.” (*In re Aiden L.* (2017) 16 Cal.App.5th 508, 520, fn. omitted (*Aiden L.*)) “[A]s with any statute, interpretation of the UCCJEA is a question of law we review de novo.” (*Schneer v. Llauro* (2015) 242 Cal.App.4th 1276, 1287.)

Family Code section 3421 provides that California has jurisdiction over a dependency action if (1) California is the child’s home state, (2) the child’s home state declines to exercise jurisdiction on the ground California is a more appropriate jurisdiction, or (3) there is no home state for the child.³

“‘Home state’ means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. . . . A period of temporary absence of any of the mentioned persons is part of the period.” (Fam. Code, § 3402, subd. (g).) Whether there has been a temporary absence from the alleged home state “necessarily requires

³ The statute provides, in full: “(a) Except as otherwise provided in Section 3424, a court of this state has jurisdiction to make an initial child custody determination only if any of the following are true: [¶] (1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state. [¶] (2) A court of another state does not have jurisdiction under paragraph (1), or a court of the home state of the child has declined to exercise jurisdiction on the grounds that this state is the more appropriate forum under Section 3427 or 3428, and both of the following are true: [¶] (A) The child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. [¶] (B) Substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships. [¶] (3) All courts having jurisdiction under paragraph (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 3427 or 3428. [¶] (4) No court of any other state would have jurisdiction under the criteria specified in paragraph (1), (2), or (3). [¶] (b) Subdivision (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state. [¶] (c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.” (Fam. Code, § 3421.)

consideration of the parents' intentions, as well as other factors relating to the circumstances of the child's or the family's departure from the state where they had been residing." (*Aiden L.*, *supra*, 16 Cal.App.5th at p. 518.)

The parties agree that California was not the minor's home state for purposes of the UCCJEA. Mother contends that El Salvador was the minor's home state, from which she was temporarily absent; SSA contends that the minor had no home state.

The juvenile court was never asked to and did not make any findings regarding the minor's home state. As set forth *ante*, the court had before it information regarding the minor's journey from El Salvador to California via Mexico, but never conducted a hearing to make factual findings on whether California was the minor's home state, or whether California could assume jurisdiction over the minor because she had no home state. The juvenile court also failed to communicate with a court in El Salvador. This was error.

In *In re Gino C.* (2014) 224 Cal.App.4th 959 (*Gino C.*), the appellate court held that the juvenile court lacked jurisdiction to enter a child custody determination where the court had failed to communicate with the child's home state of Mexico. "Here, the parties agree the children's home state is Mexico because they had lived there for six consecutive months immediately preceding the filing of this case. [Citation.] Although the court could have contacted Mexico to address the jurisdictional issue [citation], the court opted not to do so and there is no other evidence Mexico declined to exercise its home state jurisdiction. [Citation.] Accordingly, the court had no jurisdictional basis under [Family Code] section 3421, subdivision (a), to make a child custody determination." (*Id.* at p. 965.)

"On this record, the only apparent avenue for the court to obtain home state jurisdiction over the children is for Mexico to decline to exercise its home state jurisdiction. [Citation.] Since the court opted to remain passive and did not contact Mexico, Mexico has not been given an opportunity to decide whether to exercise its

home state jurisdiction. Therefore, the court erred in assuming permanent jurisdiction over the matter.” (*Gino C.*, *supra*, 224 Cal.App.4th at p. 966.) The appellate court reversed the juvenile court’s jurisdiction and disposition orders, and remanded the matter for further proceedings. (*Id.* at p. 968.)

We note that *Gino C.* differs from the present case in two significant ways. First, the social services agency conceded that the juvenile court had not complied with the UCCJEA before assuming jurisdiction over the minor children. (*Gino C.*, *supra*, at p. 962.) Second, there was no question that Mexico was the children’s home state; the children and their mother, all of whom were United States citizens, had lived in Mexico for four years. (*Id.* at p. 962.) The children were detained when the bus they were taking from Mexico to Nevada was stopped at a border patrol checkpoint. (*Id.* at p. 962.) Here, by contrast, SSA disputes whether the court complied with the UCCJEA and where the minor’s home state is located.

In *Aiden L.*, *supra*, 16 Cal.App.5th 508, the appellate court, in an opinion authored by Presiding Justice Perluss, vacated an order terminating parental rights and remanded the matter to the juvenile court to make findings necessary to support the exercise of jurisdiction and to comply with the procedural requirements of the UCCJEA. (*Id.* at pp. 511-512.) The detention report in the case noted that the minor and his parents had traveled from Arizona to California about four months before the dependency petition was filed, but the juvenile court had never addressed the issue of jurisdiction under the UCCJEA. (*Id.* at pp. 520-521.)

The appellate court also provided guidance for the juvenile court on remand. First, the appellate court held that the juvenile court must initially determine whether Arizona was the child’s home state and, if so, communicate with the Arizona court system to allow it to decide whether to exercise home state jurisdiction. (*Aiden L.*, *supra*, 16 Cal.App.5th at p. 521.) The appellate court noted that the home state determination would require consideration of whether the family’s stay in California was

a temporary absence from Arizona, the reasons why the parents left Arizona, whether the parents' previous residence in Arizona was or was not long term, whether the parents had other children and where those children lived, and whether any criminal or other "unjustifiable conduct" was part of the reason the parents had left Arizona. (*Ibid.*)

Second, the appellate court explained that if the juvenile court decided Arizona was not the child's home state, it must determine whether California was a more appropriate forum than Arizona, considering the factors set forth in Family Court section 3427, subdivision (b), "*as of the time the [initial] dependency proceedings were initiated.*" (*Aiden L.*, *supra*, 16 Cal.App.5th at p. 522, italics added.)

We agree with the opinion in *Aiden L.* Accordingly, we reverse the juvenile court's orders and remand the matter to the juvenile court to determine whether El Salvador was the minor's home state when the dependency petition was filed. If the court determines El Salvador was the minor's home state, it shall communicate with the El Salvadoran court system pursuant to the UCCJEA. If the El Salvadoran court system declines to exercise home state jurisdiction, then the juvenile court's orders shall be reinstated.

If the juvenile court determines the minor did not have a home state when the dependency petition was filed, the court shall then make necessary factual determinations whether California should exercise jurisdiction pursuant to Family Code sections 3421, 3427, and 3428. We emphasize that these findings must be made in light of the facts and circumstances that existed when the dependency petition was filed, and not those facts and circumstances existing today. If, after making those findings, the juvenile court determines that California should have exercised jurisdiction over the minor under the UCCJEA when the dependency petition was filed, then the juvenile court's orders shall be reinstated. If, after making these findings, the court determines that California should not have exercised jurisdiction over the minor under the UCCJEA when the dependency petition was filed, then the juvenile court must proceed as provided

by the UCCJEA. We acknowledge that more than two years have passed since the dependency petition was filed, and the minor has been living in a stable foster home. However, the issue of home state jurisdiction under the UCCJEA is just that—an issue of jurisdiction, without which the juvenile court cannot act, and which is to be determined as of the inception of the case.

The failure to follow the procedural requirements of the UCCJEA is subject to harmless error review under the standards of *People v. Watson* (1956) 46 Cal.2d 818, 836. (*In re A.C.* (2017) 13 Cal.App.5th 661, 673.) UCCJEA error has been found harmless where the juvenile court found that there was no home state (*In re R.L.* (2016) 4 Cal.App.5th 125, 144-145); where the home state declined to exercise jurisdiction when it was finally contacted (*In re Christian I.* (2014) 224 Cal.App.4th 1088, 1101); and where the home state exercised jurisdiction after being contacted (*In re C.T.* (2002) 100 Cal.App.4th 101, 111-112). In the present case, however, there has been no finding regarding the minor's home state, and therefore no contact with El Salvador—which may be the home state—to determine whether it desired to exercise jurisdiction over the minor. Therefore, the error was not harmless.

The juvenile court's exercise of jurisdiction over the minor without complying with the requirements of the UCCJEA cannot be justified by the court's proper exercise of temporary emergency jurisdiction. A California court may exercise jurisdiction over a child who is present in this state if the child has been abandoned or if it is necessary to protect a child subjected to or threatened with mistreatment or abuse. (Fam. Code, § 3424, subd. (a).) “We infer from this statutory scheme the Legislature's intent to afford all children found in California the protection of California's juvenile court in exigent circumstances. The children's presence in California, where they were found in the care of an inappropriate caretaker and in a filthy, hungry and neglected condition, justified the juvenile court's initial detention order. ‘Aside from the necessity

of protecting a child from immediate harm, presence of the child in the state is the only prerequisite' to taking action.” (*In re Angel L.* (2008) 159 Cal.App.4th 1127, 1138.)

Family Code section 3424, subdivision (b) “precludes a child custody determination by a court exercising temporary emergency jurisdiction from becoming final *until this state becomes the child’s home state.*” (*Gino C., supra*, 224 Cal.App.4th at p. 966.) Citing the legislative history for the UCCJEA, the court in *In re Gino C.* noted: “[T]he UCCJEA provides for ‘temporary emergency jurisdiction, that can ripen into continuing jurisdiction *only if no other state with grounds for continuing jurisdiction can be found or, if one is found, that state declines to take jurisdiction.*’” (*Id.* at p. 967.) Here, no effort was made to identify another home state or to give it the opportunity to accept or decline jurisdiction.

While other cases have determined that temporary emergency jurisdiction may ripen into subject matter jurisdiction over a dependent child, those cases are materially distinct. (See *In re A.M.* (2014) 224 Cal.App.4th 593, 596 [California court’s jurisdiction and disposition orders would become final if Mexico chose not to assume jurisdiction]; *In re Angel L., supra*, 159 Cal.App.4th at p. 1139 [home state “expressed no interest in assuming permanent jurisdiction” and was unwilling or unable to provide children with needed services].)

DISPOSITION

The juvenile court’s order is reversed. The matter is remanded to the juvenile court for evidentiary proceedings to determine the minor’s home state, if any. If another country is determined to be the home state, the juvenile court shall communicate with that country regarding jurisdiction over the minor. If the juvenile court determines that the minor had no home state, the juvenile court shall decide whether California should exercise jurisdiction over the minor pursuant to Family Code section 3427.

If California is determined to be the minor's home state, or if the minor's home state declines to exercise jurisdiction over the minor, or if the juvenile court determines that the minor had no home state but that California should exercise jurisdiction over the minor, then the juvenile court's order shall be reinstated.

FYBEL, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

GOETHALS, J.